

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

<p>IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION</p>	
<p>THIS DOCUMENT RELATES TO:</p> <p><i>The City of New York v. Abbott Laboratories, Inc., et al.</i> S.D.N.Y. Case No. 04-CV-06054</p> <p><i>County of Albany v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0425</p> <p><i>County of Allegany v. Abbott Laboratories, Inc., et al.</i> W.D.N.Y. Case No. 05-CV-0236</p> <p><i>County of Broome v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0456</p> <p><i>County of Cattaraugus v. Abbott Laboratories, Inc., et al.</i> W.D.N.Y. Case No. 05-CV-0256</p> <p><i>County of Cayuga v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0423</p> <p><i>County of Chautauqua v. Abbott Laboratories, Inc., et al.</i> W.D.N.Y. Case No. 05-CV-0214</p> <p><i>County of Chemung v. Abbott Laboratories, Inc., et al.</i> W.D.N.Y. Case No. 05-CV-6744</p> <p><i>County of Chenango v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0354</p> <p><i>County of Columbia v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0867</p> <p><i>County of Cortland v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0881</p> <p><i>County of Dutchess v. Abbott Laboratories, Inc., et al.</i> S.D.N.Y. Case No. 05-CV-6458</p> <p><i>County of Essex v. Abbott Laboratories, Inc., et al.</i> N.D.N.Y. Case No. 05-CV-0878</p>	<p>MDL NO. 1456 Civil Action No. 01-12257-PBS</p> <p>Judge Patti B. Saris</p> <p>NOTICE OF SUPPLEMENTAL AUTHORITY IN FURTHER OPPOSITION TO MERCK'S MOTION TO DISMISS</p>

County of Fulton v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0519

County of Genesee v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-00267

County of Greene v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0474

County of Herkimer v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-00415

County of Jefferson v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0715

County of Lewis v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0839

County of Madison v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-00714

County of Monroe v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6148

County of Niagara v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-06296

County of Oneida v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0489

County of Onondaga v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0088

County of Ontario v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6373

County of Orleans v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6371

County of Putnam v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 05-CV-04740

County of Rensselaer v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-00422

County of Rockland v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 03-CV-7055

County of Schuyler v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6387

<p><i>County of Seneca v. Abbott Laboratories, Inc., et al.</i> W.D.N.Y. Case No. 05-CV-6370</p>	
--	--

County of St. Lawrence v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0479

County of Saratoga v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0478

County of Steuben v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6223

County of Suffolk v. Abbott Laboratories, Inc., et al.
E.D.N.Y. Case No. 03-CV-12257

County of Tompkins v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0397

County of Ulster v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 06-CV-0123

County of Warren v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0468

County of Washington v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0408

County of Wayne v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-06138

County of Westchester v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 03-CV-6178

County of Wyoming v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6379

County of Yates v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-06172

Plaintiffs, the City of New York and above-captioned New York Counties, hereby submit the enclosed Memorandum Decision in the matter styled *State of Nevada Ex Rel H. Dean Steinke v. Merck & Co. Inc.*, Docket No. 3:05-cv-00322 pending before the Honorable Howard D. McKibben, Justice, United States District Court, District of Nevada (“the Decision”) as supplemental authority in further opposition to Merck’s individual motion to dismiss. In that case, the State of Nevada seeks to recover damages to its Medicaid program resulting from Merck’s failure to include certain discounted and free drugs in its calculation of “Best Prices” under the Medicaid Rebate Statute, 42 U.S.C. § 1396r-8. The Decision is attached hereto as Exhibit A.

Confronted by arguments virtually identical to those advanced by Merck in this action, Judge McKibben denied the motions to dismiss Nevada’s claims for violation of Nevada’s False Claims Act, N.R.S. § 357.010. As in this action, the facts underlying Nevada’s claims are that Merck improperly excluded certain transactions from its best price calculations by misusing the nominal price exception. As in this action, Merck’s primary defenses were that the disputed transactions were exempted from Best Price calculations because they were nominally priced, and that plaintiffs failed to satisfy the heightened pleading requirements under F.R.C.P. 9(b). Judge McKibben rejected those defenses and denied Merck’s motion in its entirety.

Dated: November 1, 2006

Respectfully submitted,

KIRBY McINERNEY & SQUIRE, LLP
830 Third Avenue
New York, New York 10022
(212) 371-6600

By: /s/Joanne M. Cicala
Joanne M. Cicala (JC 5032)
James P. Carroll Jr. (JPC 8348)
Aaron D. Hovan (AH 3290)

*Attorneys for the City of New York and all captioned
New York Counties.*

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
John R. Low-Beer (JL 3755)
Ari Biernoff (AB6357)
Assistant Corporation Counsels
100 Church Street
New York, New York 10007
(212) 788-1007

Attorneys for the City of New York

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on the 1st day of November, 2006 she caused a true and correct copy of the Notice of Supplemental Authority in Further Opposition to Defendants' Motion to Dismiss (with Exhibit A) to be delivered to counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the honorable Patti B. Saris in MDL No. 1456.

/s/Joanne M. Cicala
Joanne M. Cicala, Esq.
Kirby McInerney & Squire
830 Third Avenue, 10 Floor
New York, NY 10022
(212) 371-6600